

(1) Definitions:

(a) A "composite return" means an information return similar to the federal Schedule K-1 which contains information concerning one or more owner's distributive share of income, deductions, and losses.

(b) A "composite payment" means a payment of estimated income tax by the subchapter K entity on behalf of the owners described in the accompanying composite return. The payment shall be considered a loan from the entity to the owner, payable on demand, bearing interest from the date of the loan to the date of its payment at the minimum applicable federal rate with respect to demand instruments as provided under 26 U.S.C. § 7872.

(2) A subchapter K entity may file a composite return and make composite payments on behalf of its owners if there are one or more nonresident owners at any time during the taxable year or if required to do so by federal law for all owners.

(a) The composite return may be filed on behalf of some or all nonresident owners and must be filed on behalf of nonresident owners for whom a consent agreement has not been filed.

(b) Resident owners may be included in a composite return if so required by federal law.

(c) Subchapter K entities which choose to file composite returns or which are required to file composite returns must do so on the form prescribed by the Department. Composite payments must be made on the form prescribed by the Department.

(d) In computing the amount of the composite payment, the Subchapter K entity shall multiply each owner's distributive share of income attributed to Alabama by the maximum tax rate for the owner.

1. Each nonresident owner's distributive share of income is the sum of the owner's deemed distributive share of the Alabama portion of:

(i) Separately stated income, loss, deduction, or expense of the subchapter K entity; provided that no deduction will be allowed for items of loss, deduction, or expense which are subject to other limitations on the Alabama individual income tax return Form 40NR - including federal income tax, contributions, investment interest expense, and casualty losses; and

(ii) Nonseparately stated income, loss, deduction, or expense of the subchapter K entity.

2. In computing the amount of the composite payment, a loss for one nonresident owner may not be used to offset income or gain of any other nonresident owner.

3. In computing the amount of the composite payment, a net operating loss carryforward may not be used to offset income or gain.

(3) Composite returns and composite payments are due on the fifteenth day of the fourth month following the close of the subchapter K entity's taxable year.

(a) 1. The entity will be granted an automatic six month extension of time for filing the composite return.

2. An entity that fails to file the required return by the extended due date may not be granted an automatic extension the following (ensuing) year, but may be required to request the extension in writing. If a written request is required, the request must be made to the Commissioner of Revenue or to his designee, and must explain the reason for the request and the reason for failing to timely file the return in the previous year. The request also must state that the entity has no outstanding debts owed to the Department.

3. An extension of time granted to file the return pursuant to this section is not an extension of time for payment of tax. The amount of tax due must be paid on or before the due date of the return without regard to the extension to file the composite return. Underpayment of tax penalties plus any applicable interest will be imposed as provided by law without regard to any extension granted under this section.

(b) Amended composite returns for overpayment or additional tax due for a taxable year will be accepted up to the extended due date for filing the Alabama Form 65 return for the same taxable year.

(c) Refund requests or additional payments made after the extended due date for filing the return must be made on the Alabama income tax return of the nonresident owner(s).

(4) The subchapter K entity is required to file a consent agreement for each nonresident owner that does not participate in the composite filing.

(a) A consent agreement for each nonresident owner shall be due at the same time as the first subchapter K return is due.

(b) If, during any subsequent taxable year, the subchapter K entity has any nonresident owners for whom a consent agreement has not previously been filed, then a consent agreement is due for those nonresident owners at the same time as the annual return is due for that taxable year.

(c) The subchapter K entity shall include each owner for whom a consent agreement is not timely filed in a composite return and make a composite payment as specified in paragraphs (2) & (3) above.

(d) The consent agreement must be notarized or otherwise authenticated before some officer authorized to administer oaths and must contain the following information:

1. The name, address, and social security number of the owner,

2. A recitation of the agreement to report and pay tax to Alabama on the owner's share of the subchapter K entity's income in exchange for the benefits of allowing the entity to file an Alabama Form 65, and

3. An agreement appointing the Alabama resident agent of the entity and any agent or officer of the entity present in Alabama as agent of the owner for service of process in any matter before the Department relating to the income tax returns of the owner and/or the entity.

(e) If the ownership interest is held by multiple owners (such as joint owners), each owner must execute a separate consent agreement.

(f) Each nonresident owner may designate any other person or firm present in Alabama as agent for service of process, in addition to the agents required to be appointed in subparagraph (d) 3, above.

(g) Any nonresident owner may, by power-of-attorney, authorize anyone to execute the required consent agreement on behalf of the owner. Such power-of-attorney, to be effective, must be filed with the Department on or before the due date (with extensions) of the first return in which a consent agreement is being executed under the power-of-attorney. The power-of-attorney need be filed only once, and remains valid until the expiration date specified therein or until notice of revocation, cancellation, or modification is received by the Department. Such power-of-attorney may be in any form sufficient to indicate the intent of the parties, and must be notarized or otherwise authenticated before some officer authorized to administer oaths.

(h) 1. A nonresident is any person who is a legal resident of any state other than Alabama, or of any territory, possession, district, or foreign country.

2. The status as a resident or nonresident will be determined as of the date of any distribution or deemed distribution.

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History: